

IN THE HIGH COURT OF JUDICATURE, ANDHRA PRADESH
AT HYDERABAD

(Special Original Jurisdiction)

MONDAY, THE SIXTH DAY OF DECEMBER
TWO THOUSAND AND FOUR

PRESENT

THE HON'BLE MS JUSTICE G.ROHINI

WRIT PETITION No.16472 of 2004

Between:

Chintala Yesuratnam S/o. Adinarayana
R/o. H.No. 25/II/1736, Ummareddigunta, Nellore-4.

..... PETITIONER

AND

1. The District Collector, Nellore, Andhra Pradesh.
2. The Revenue Divisional Officer, Nellore, Andhra Pradesh.
3. The Mandal Revenue Officer, Nellore, Andhra Pradesh.
4. The Deputy Director of Social Welfare, Nellore, Andhra Pradesh.

....RESPONDENTS

Petition under Article 226 of the Constitution of India praying that in the circumstances stated in the affidavit filed herein the High Court may be pleased to issue an order or direction or writ more appropriately a writ of Mandamus to declare the impugned resumption orders passed by the 2nd respondent i.e., R.D.O., Nellore in Rc.1-1268/2000 Dt. 20.2.2000 as illegal, by setting aside the same.

Counsel for the Petitioner : MR.K.RAJANNA

Counsel for the Respondent Nos.1 to 4: GP FOR REVENUE

The Court made the following :

ORDER:

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This writ petition is filed seeking a declaration that the impugned resumption order, dated 20.02.2000, passed by the second respondent – Revenue Divisional officer, Nellore, is arbitrary and illegal.

The case of the petitioner is that the then District Collector, Nellore, vide proceedings dated 23-10-1968 assigned certain extents of land and house sites in Sy.No.2058 of Nellore in favour of the Gandhi Girijan Harijan Horticultural Joint Farming Society. The petitioner was one of the members of the Society and as per the list of beneficiaries approved by the District Collector, the then Tahsildar, Nellore by proceedings dated 13-12-1968 has given possession of Ac.0-05 cents of land towards house site and Ac.0-25 cents for cultivation to the petitioner as demarcated on ground by the Taluk Surveyor, Nellore. The petitioner claims that in pursuance thereof he and other beneficiaries came into possession of their respective plots and also constructed houses and have been cultivating the land. It is alleged that when the respondents made an attempt to dispossess the petitioner and others from the land in question on the ground that it is required for construction of Ambedkar Bhavan, the Andhra Pradesh Scheduled Castes Association protested the action of the respondents and made a representation requesting the respondents to choose some other land for the said purpose. However, the respondents failed to consider and therefore, the petitioner along with others filed W.P.No.26059 of 1999. The said writ petition was disposed of on 21.12.1999 observing that in the absence of any specific order, interference of the Court is not warranted. Thereafter, since the threat of dispossession continued, the petitioner again filed W.P.No.5591 of 2000, which was dismissed by an order, dated 06.04.2000, on the ground that the matter involves several disputed questions of fact. In the circumstances, the petitioner filed O.S.No.463 of 2000 on the file of the Principal Junior Civil Judge, Nellore seeking a decree for permanent injunction against the respondents herein. During the trial of the said suit, the third respondent filed a copy of the resumption orders, dated 20.02.2000 said to have been passed by the second respondent. The petitioner states that a copy of the said order has not been served on him and that though he

made an application seeking amendment to the relief claimed in the suit, the learned trial Judge declined to consider the same and by judgment dated 07.07.2003, the suit itself was dismissed and the same was confirmed on Appeal. However, the Second Appeal said to have been filed by the petitioner appears to be pending before this Court. Now this writ petition is filed assailing the order of resumption dated 20.02.2000 contending inter alia that before passing the said order, no notice was issued to him and no opportunity was given to him to rebut the allegations made thereunder. The further contention is that the resumption of land in question, which was assigned as long back as in the year 1968, is not permissible under law.

On behalf of the respondents, a counter-affidavit has been filed denying the allegations made by the petitioner and stating that the plea of the petitioner that the impugned order, dated 20.02.2003, was not served on the petitioner is false and incorrect. It is stated that as a matter of fact, the petitioner evaded service of the said order and therefore, the same was affixed at the site in question and it was also sent by certificate of posting. So far as the further allegation that there was no prior notice to the petitioner is concerned, it is contended that the learned Principal Junior Civil Judge Nellore, on appreciation of the evidence on record, has recorded a finding in O.S.No.463 of 2000 that there was service of notice and therefore, the contention is untenable.

I have heard the learned counsel for the petitioner and the learned Government Pleader appearing for the respondents and perused the material on record.

Learned Counsel for the petitioner, while reiterating the contentions raised in the writ petition, submitted that the impugned order, which was passed without notice to the petitioner, is in violation of principles of natural justice and therefore, the same cannot be sustained. The learned counsel has also relied upon the decisions of this Court in **(i) V.Santhakumari and others Vs. Revenue Divisional Officer and Additional District Magistrate, Ranga Reddy District and another, (ii) B.Adinarayana Murthy Vs. Collector, Ananthapur District and another, and (iii) Mandlappa @ Mandla Giriappa Vs Mandal Revenue Officer and another** and contended that the resumption of assigned lands is not permissible after a long lapse of time.

On the other hand, the learned Government Pleader for Revenue contended that under Section 4-B of The A.P. Assigned Lands (Prohibition of Transfers) Act, 1977

(for short “the Act”), an appeal lies to the District Collector against the impugned order and therefore, this writ petition cannot be entertained.

However, learned counsel for the petitioner, while placing reliance on the decisions in ***Harbanslal Sahnia and another Vs. Indian Oil Corporation Limited and others and Radha Raman Samanta Vs Bank of India and others*** vehemently contended that since the impugned order is in violation of the principles of natural justice, the writ petition is maintainable irrespective of the fact that an alternative remedy is available under the statute.

A copy of the judgment dated 07.07.2003 in O.S.No.463 of 2000 on the file of the Principal Junior Civil Judge, Nellore shows that the plea of the petitioner that there was no show cause notice before passing the impugned order, dated 20.02.2000, has been considered and on appreciation of the evidence, both documentary and oral adduced by both the parties a finding has been recorded by the Court that a show cause notice was served on the petitioner before passing the order of resumption dated 20-2-2000. In the circumstances, I do not find any substance in the contention of the petitioner that the impugned order is in violation of the principles of natural justice. Hence, as rightly contended by the learned Government Pleader, without exhausting the alternative remedy available under the statute, the petitioner cannot maintain this writ petition.

Accordingly, without expressing any opinion as to the validity of the impugned order dated 20-02-2000, the writ petition is disposed of granting leave and liberty to the petitioner to work out the alternative remedy of appeal as available under the statute. It is open to the petitioner to urge all the contentions before the appellate authority, including the ground that the resumption of the assigned land after long lapse of time is not permissible. If such an appeal is preferred within a period of four weeks from today, the same shall be considered and appropriate orders shall be passed in accordance with law within a period of three months thereafter. Having regard to the facts and circumstances of the case, there shall be a direction that till the disposal of the Statutory Appeal if filed within the period specified above, the interim order of status quo, granted by this Court on 01.11.2004, shall be continued with regard to the nature and possession of the land in question. No costs.

06.12.2004

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To

1. The District Collector, Nellore, Andhra Pradesh.
2. The Revenue Divisional Officer, Nellore, Andhra Pradesh.
3. The Mandal Revenue Officer, Nellore, Andhra Pradesh.
4. The Deputy Director of Social Welfare, Nellore, Andhra Pradesh.
5. 2CCs to the G.P. for Revenue, High Court Buildings, Hyderabad (OUT).
6. 2CD copies.